IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11099 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESHKUMAR PREMSHANKER JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for the Petitioner.

Mr.I.M. Pandya, Assistant GOVERNMENT PLEADER, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2003

ORAL JUDGEMENT

1. Rule. With the consent of the parties, the matter is taken up for final hearing today.

2. It is unfortunate that the petitioner is required to knock the doors of this Court even though he was required to be reinstated in service in view of the acquittal order passed in his favour.

3. The petitioner is serving as a primary teacher at Velavadar Primary School and, at present, he is under suspension. By order dated 18th October, 1997, he was placed under suspension by the order of the District Primary Education Officer. The petitioner was suspended in view of the criminal case which was pending against him under Section 302 of the Indian Penal Code. It is not in dispute that in view of the pendency of the said Criminal Case, the petitioner was placed under suspension. It is not in dispute that the petitioner was acquitted under Section 235(1) of the Code of Criminal Procedure. The operative part of the said order is also produced by the petitioner at page 6 of the compilation, at Annexure 'B'. After his acquittal, he is not subjected to any departmental proceedings in any manner and he continued in suspension only in view of the aforeaid criminal case. The say of the petitioner is that even though he is now acquitted, in spite of various representations, from time to time, he is not taken back in service.

4. In response to the notice of this Court, Mr.I.M. Pandya, learned AGP, submitted that since the order of acquittal was challenged before the High Court by way of appeal, no reinstatement order was given to the petitioner and he is still kept under suspension. Mr.Pandya, learned AGP, further submitted that since the Government Pleader of the District Court gave opinion that in view of the pendency of the criminal appeal, it is not obligatory on the part of the Department to reinstate the petitioner, the Department has not passed any reinstatement order in favour of the petitioner.

5. It is submitted by Mr.Supehia that simply because criminal appeal is filed, is no ground to keep the petitioner under suspension, especially when the order of acquittal is still in force. He submitted that when there is an order of acquittal, there is a presumption of innocence. He further submitted that since the petitioner was suspended only in view of the criminal case, and now, since he is acquitted, it is not open for the Department to continue further the suspension of the petitioner in any manner.

So far as the aforesaid aspect is concerned, Mr.Pandya, learned Assistant Government Pleader, frankly

conceded that the order of suspension was passed in view of the pendency of the criminal case. He submitted that in view of the opinion of the Government Pleader, no reinstatement order was given.

6. I have heard Advocates of both the sides at length, and, in my view, the Department has not properly considered the matter from an appropriate angle. It is required to be noted that the petitioner is acquitted and even at present, no departmental enquiry is pending against him. In that view of the matter, there is absolutely no justifiable reason for the Department not to reinstate the petitioner by revoking the suspension order. It is a matter of pity that since 2000, the petitioner is requesting the Department to give him appropriate posting order by revoking the suspension order in view of the acquittal order; yet, without any justifiable ground, suspension order is not revoked by the Department. Instead, the Deputy Secretary informed the petitioner, by letter dated 18th September, 2002 that since criminal appeal is filed against the judgment of the Sessions Court, the petitioner is required to be kept under suspension. It is difficult to appreciate as to under which provision the Secretary has taken such view. When there is an order of acquittal, it was the duty of the Department to revoke the suspension order in view of the acquittal order. Simply because the appeal is pending is no ground to continue the petitioner under suspension especially when the suspension order itself is passed in view of the pendency of the criminal case.

7. The learned Advocate for the petitioner has also relied upon the decision of this Court in Special Civil Application No.2960 of 1997, which is annexed with the compilation at page 12. This Court has also taken the view that the petitioner cannot be continued under suspension under the guise that some complaints are pending investigation. In the aforesaid case, in view of the acquittal of the petitioner, in connection with the criminal case, it was held that the petitioner therein is entitled to reinstatement irrespective of the pendency of the revision application before this Court.

8. Considering the aforesaid aspect of the matter, the petition is allowed. Respondents are directed to take back the petitioner on his original post after revoking the suspension order. Appropriate orders in this connection be passed within a period of two weeks from today.

Petition is accordingly allowed. Rule is made

absolute to the aforesaid extent, with no order as to costs.

(P.B. Majmudar, J.)

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(apj)